



Common Sense Initiative

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Business Impact Analysis

Agency Name: Ohio Department of InsuranceRule Contact Name: Loretta MedvedRule Contact Information: loretta.medved@insurance.ohio.gov
614-644-0239Regulation/Package Title (a general description of the rules' substantive content):
Use of credit history and credit scores and surety bail bond agent conduct.Rule Number(s): 3901-1-55
3901-1-66Date of Submission for CSI Review: June 15, 2022Public Comment Period End Date: June 30, 2022 12:00AM

Rule Type/Number of Rules:

- ☐ New/ rules ☒ No Change/ 2 rules (FYR? 2022)
☐ Amended/ rules (FYR?) ☐ Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 requires agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the Agency determined the rule(s) create?

The rule(s):

- ☒ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☐ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☐ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Rule 3901-1-55: Some insurance companies use an individual consumer's credit history or credit score as a factor in underwriting and/or premium determinations. This rule establishes usage limitations, requires certain disclosures, and defines unfair practices in order to protect consumers.

Rule 3901-1-66: The purpose of this rule is to establish standards of conduct for surety bail bond agents. A surety bail bond is an agreement made between one or more persons and a bond agent where the bond agent agrees to post the necessary bail so that a defendant can be released from jail. The agreement is backed by an insurance company contract that is signed by the person(s) and the bond agent on behalf of the insurance company. Sufficient cash or collateral to cover the full amount of the bail if the defendant misses their court date also backs the agreement. The surety bail bond rule defines specific types of bonds, details collateral and prohibits specific solicitation activities.

No amendments are proposed for either rule.

3. Please list the Ohio statute(s) that authorize the Agency to adopt the rule(s) and the statute(s) that amplify that authority.

Sections 3901.041 and 3905.95 of the Revised Code.

4. Does the regulation implement a federal requirement? ☐ Yes ☒ No

Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

☐ Yes ☒ No

If yes, please briefly explain the source and substance of the federal requirement.

Not applicable.

5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Property and casualty insurers may develop premiums by incorporating a consumer's credit score as a part of the rating methodology to determine an individual's insurance score. The scope of the permitted usage of this information is limited to certain scenarios and must adhere to specific rules in order to establish consumer protections. This rule establishes those limitations.

Surety bail bond agents provide a product or service to individuals at vulnerable times. This rule establishes conduct requirements that promote consumer protection and serve to protect the overall integrity of the industry.

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The success of both rules can be monitored by an understanding of the requirements throughout the regulated community and the department receiving a low number of consumer complaints.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931? ☐ Yes ☒ No

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not applicable.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.*

On April 28, 2022 the department sent an email to industry stakeholders including insurance companies and trade groups. This list included the American Fraternal Alliance, Ohio

Insurance Institute, the Association of Ohio Life Insurance companies, Ohio Association of Health Plans, Property Casualty Insurers of America, and the National Association of Mutual Insurance Companies among others.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

No comments were received regarding this rule packet.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The credit score rule was developed through industry input and evaluating similar regulations in other states, as well as guidance provided by the National Association of Insurance Commissioners (NAIC). Consumer protections were the driving factor in establishing the specifics of the rule.

The bail bond agent rule was established to further clarify statute. Specifics were derived from interested party discussions and evaluating trends in consumer complaints.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The credit score rule was promulgated to set forth the guidelines with respect to the use of consumers' credit score information by the insurer in determining an individual insurance score. Guidelines are necessary to ensure compliance with Ohio law and to protect consumers.

The bail bond agent rule was designed to clarify a general statute, additional specificity was requested by industry.

13. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

Both rules establish a set of requirements to ensure consumers are appropriately protected and insurers are compliant. Performance based regulations are not appropriate for these rules.

14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The regulation of surety bail bond agents and insurance products is exclusive to the department and neither rule duplicates any other rule or statute.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Both rules will continue in-force as currently implemented. The department maintains the product regulation division to assist insurers with filings as needed and the enforcement division to answer any specific questions surety bail bond agents may have.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

a-c. 3901-1-55: Property and casualty insurers who use insurance scoring practices in underwriting and establishing rates are impacted by the requirements of this rule. Since the rule will remain substantively in place, employees of the insurer will simply need to continue to refer to the provisions of the rule while developing applicable insurance products.

3901-1-66: Surety bail bond agents are affected by this rule as it directly impacts how they are to conduct themselves when selling their product. Staff resources and time will be required to ensure that agents make themselves aware of the conduct standards and that they are abiding by them. Agents will need to establish compliant business practices which will require review of the rule. There are no proposed amendments to the rule.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

3901-1-55: This rule simply establishes the guidelines for insurers using a certain rating methodology. The requirements established are essential for consumer protections.

3901-1-66: Surety bail bond agents provide a product or service to individuals at vulnerable times. This rule establishes conduct requirements that promote consumer protection and serve to protect the overall integrity of the industry.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

All businesses and their employees are required to meet the same conduct standards, regardless of size in order to maintain a balanced market.

19. How will the Agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Non-compliant filings are identified in the review process and discussed with the company. Generally, companies agree to change a filing as requested by the department, or the department will work with the company to propose another solution. No monetary fines or penalties exist for the submission of a non-compliant product filing.

Depending on the severity of the offense, the department will issue a warning letter to first time offenders, which is not an official action against a bail bond agent.

20. What resources are available to assist small businesses with compliance of the regulation?

Department staff is available to answer questions, regardless of the size of the business.